

Special Civil Application No 995 of 1983

Date of decision: 08/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

VALLABHBHAI JIVANJI PATEL & ORS.

vs

MAMLATDAR, CHIKHLI & ANR.

Appearance:

Shri V.H. Patel, Advocate, for Shri H.L. Patel,
Advocate, for the Petitioners

Shri D.N. Patel, Asst. Govt. Pleader, for the
Respondents

Coram : MR.JUSTICE A.N.DIVECHA

ORAL JUDGEMENT

The show-cause notice issued by the Mamlatdar of Chikhli (respondent No. 1 herein) on 24th December 1982 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned notice issued to each petitioner, each petitioner is directed to show cause why the unauthorised construction on the land in question should not be removed and why he should not summarily be evicted therefrom.

2. A preliminary objection is raised by learned Assistant Government Pleader Shri D.N. Patel for the respondents to the effect that the petitioner has not paid proper court-fees in

this case. There are as many as 28 petitioners and, in view of sec. 18 of the Bombay Court-Fees Act, 1959, each petitioner will have to pay separate court-fees as each has a separate cause of action. At this stage learned Advocate Shri Patel for the petitioners states that the petitioners will pay up deficit court-fees, if any,, in this case within a fortnight from today. In that view of the matter, the preliminary objection does not survive.

3. As rightly submitted by learned Assistant Government Pleader Shri D.N. Patel for the respondents, this petition is directed against a show-cause notice and it should not be entertained at this stage in view of the decision of the Supreme Court in Civil Appeals Nos. 4522 of 1995 and allied matters decided on 30th November 1995.

4. It appears that the aforesaid decision of the Supreme Court was rendered in a matter arising from the judgment of this Court where this Court interfered with the show-cause notice issued under sec. 211 of the Bombay Land Revenue Code, 1879 keeping in view the decision of the Supreme Court in the case of State of Gujarat v. Patel Raghav Natha reported in 1969(10) G.L.R. 992. Accepting the appeal against the aforesaid judgment of this Court, the Supreme Court has held that in the case of a show-cause notice, the concerned party should exhaust his remedies by replying to the show-cause notice and allow the final decision to be made. The aforesaid ruling of the Supreme Court is binding to this Court. In that view of the matter, this petition need not be entertained at this stage.

4. In the result, this petition fails. It is hereby rejected. Respondent No. 1 is however directed not to implement his decision (if adverse to the petitioner or any of them) for a period of 15 days from the date of its communication to the petitioners in each such case to enable the aggrieved petitioners to approach this Court by means of an appropriate proceeding. Rule is accordingly discharged with no order as to costs.
